Supreme Court, U.S.
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No. 85-383

UNITED STATES SUPREME COURT

October Term, 1985

LYNN JOHNSTON,

Plaintiff-Petitioner

v

CITY OF ANN ARBOR, CITY OF ANN ARBOR POLICE DEPARTMENT, BREWER'S TOWING SERVICE, S. J. ELDEN, P. G. V. THOMASSEN, and GEORGE ALEXANDER, Judges of the Fifteenth District Court of the State of Michigan,

Defendants-Respondents

IN RE: PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENT CITY OF ANN ARBOR IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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CITATIONS TO LOWER COURT OPINIONS AND JUDGMENTS

District Court

The decision of the U. S. District Court in this case, District Court No. 84-CV7043 AA, was rendered in orders dated June 26 and August 28, 1984 and a judgment dated August 28, 1984.

Court of Appeals

The decision and order of the Sixth Circuit Court of Appeals affirming the District Court was filed on June 10, 1985 and issued as mandate on July 2, 1985. The decision was not recommended for full text publication by the Court.

STATEMENT OF THE CASE

On January 10, 1983, a car registered to Richard Schwallier was impounded by the City of Ann Arbor, Michigan. It was impounded because there were 22 outstanding parking tickets that had been issued to the registered owner of the car, with accrued fines and charges of $294.00. No one had ever responded to any of the tickets.

Rather than following the procedure under state and City law for contesting the impoundment of the car through a hearing, [see, e.g., MCLA 257.252f, MSA 9.1952(6)], Petitioner instead commenced a lawsuit in federal district court. Petitioner alleged she was the "bailee" of the car. The suit raised various claims, including the constitutionality

of Ann Arbor's impoundment ordinance and a claim that state district court judges in Ann Arbor were biased in parking matters because under state law part of their salaries are paid by the City of Ann Arbor. (Pursuant to MCLA 600.8202, MSA 27A 8202, the City pays a uniform salary supplement for the three district judges in the City.)

In response to motions to dismiss filed by all defendants, the District Court dismissed Petitioner's suit in orders dated June 26 and August 28, 1984. The District Court held that no hearing was required prior to the towing of the vehicle because City law provided for a prompt hearing after the vehicle had been towed. The Court also held that the Petitioner had no standing

to raise the alleged financial biases of the judges. The Court stated further that, in any event, the uniform partial funding of the judges' salaries by the City did not constitute the kind of direct pecuniary interest in judicial proceedings condemned by this Court in Ward v Monroeville, 409 US 57, 34 L Ed 2d 267, 94 S Ct 80 (1972).

Petitioner appealed to the Sixth Circuit U. S. Court of Appeals. On June 2, 1985, the Court of Appeals affirmed the decision of the District Court. In a petition dated September 5, 1985, Petitioner applied for a writ of certiorari to this Court. The only question on which review was sought is whether the "optional 'compensation enhancement' of judges' salaries by a local political

subdivision [is] unconstitutional The only "applicable laws" cited in the petition are state constitutional provisions and a Michigan court rule.

ARGUMENT

This petition fails to present any of the "special and important reasons" listed in Supreme Court Rule 17.1 as examples of when certiorari may be granted. The decisions of the District Court and Court of Appeals on the issue raised by Petitioner were straightforward and unsurprising. The Court of Appeals simply affirmed the District Court's holding that the uniform partial funding of state district court judges' salaries by the City of Ann Arbor was

clearly distinguishable from the facts of Ward v Village of Monroeville, supra. The Court of Appeals decision also implied its agreement with the conclusion of the District Court that Petitioner lacked standing to challenge the compensation system for state judges, citing Village of Arlington Heights v Metropolitan Housing Development Corp, 429 US 252, 50 L Ed 2d 450, 97 S Ct 555 (1977).

Neither of these conclusions conflicts with any other court decision at any level, and Petitioner has not cited any such conflicts. Moreover, the decisions are not radical departures from the "accepted and usual course of judicial proceedings." Finally, the issues of law passed upon by the lower courts had already been settled by this Court

in Ward v Monroeville, supra, and Village of Arlington Heights v Metropolitan Housing Development Corp, supra. Therefore, none of the reasons listed in Supreme Court Rule 17.1(a)-(c) are presented in this petition.

The petition in essence seeks some sort of advisory opinion from this Court on Michigan law. Petitioner is trying to challenge the compensation system for state judges in Michigan, yet she in this case had no contact with the judges that might have served as the foundation for such a challenge. The impounded car was registered not to Petitioner, but to someone else. Under Michigan law, that other person, and not the Petitioner, was deemed responsible for the accumulated parking citations that led to the

impoundment of the vehicle. By operation of state law, the citations ripened into default judgments against the registered owner and not the Petitioner. When the car was impounded for having more than six defaulted parking citations against its registered owner, neither Petitioner nor the registered owner requested a hearing to contest the impoundment as provided in City and state law.

Against this background, Petitioner has no basis for asserting she had been damaged or affected in any way by the alleged biases of the judges. In fact, she had no contact with them at all. She cannot therefore point to any injury due to their alleged biases. This case

does not present a ripe, properly justiciable controversy. According to Petitioner's own brief, it only involves state law questions. The petition for certiorari should be denied.

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